

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LOUIS M. GERSON COMPANY, INC.,

Civil No. 04-12389 (MLW/RBC)

Plaintiff,

v.

3M COMPANY,

Defendant.

**3M COMPANY'S MOTION TO
DISMISS GERSON'S AMENDED
COMPLAINT FOR LACK OF SUBJECT
MATTER JURISDICTION UNDER
RULE 12(b)(1)**

ORAL ARGUMENT REQUESTED

On December 7, 2004, 3M Company filed an Amended Covenant Not to Sue ("Amended Covenant"). The Amended Covenant divested this Court of subject matter jurisdiction. *Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054 (Fed. Cir. 1995). Accordingly, 3M Company hereby moves the Court for an order dismissing the complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1).

The motion is based on the concurrently filed Memorandum, the Covenant, all documents on file with the Court, any other oral or documentary evidence as may be presented, and such other matters of which the Court may properly take judicial notice.

By its attorneys,

Dated: December 20, 2004

/s/ Frank E. Scherkenbach
Frank E. Scherkenbach (BBO #653819)
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110

Attorneys for Defendant
3M COMPANY

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), oral argument is hereby requested.

Dated: December 20, 2004

/s/ Frank E. Scherkenbach
Frank E. Scherkenbach

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

I, **Frank E. Scherkenbach**, hereby certify that on December 20, 2004, I requested that plaintiff stipulate to the relief sought by this motion, but was unable to procure its agreement.

Dated: December 20, 2004

/s/ Frank E. Scherkenbach
Frank E. Scherkenbach (BBO #653819)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing 3M COMPANY'S MOTION TO DISMISS GERSON'S AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION UNDER RULE 12(b)(1) was served on counsel for Plaintiff regular mail on Robert L. Kann, Bromberg & Sunstein LLP, 125 Summer Street, Boston, MA 02110 on this 20th day of December, 2004.

/s/ Kathleen J. Tobin
Kathleen J. Tobin